

**FILED**

**MAR 06 2009**

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

RICHARD GOLD,	)	CV 09-16-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MONTANA SUPREME COURT, et al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Gold has filed a Complaint under 42 U.S.C. § 1983 alleging denial of his constitutional rights stemming from the refusal of state courts to grant him court-appointed counsel in a civil case.

United States Magistrate Judge Jeremiah C. Lynch conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that

statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Lynch issued Findings and Recommendations in which he recommends dismissal of the Complaint. Judge Lynch explained that the state judicial officers named in the lawsuit have absolute immunity for judicial acts. With respect to injunctive relief against the judicial officers in their official capacity, Judge Lynch explained that such relief is unavailable because there is no federal constitutional right to counsel in a civil proceeding. The magistrate determined that the claims against the State of Montana, the Montana Supreme Court, and the Montana Fourth Judicial District Court fail because those entities are immune from suit under the Eleventh Amendment. Because all of the federal claims are recommended for dismissal, Judge Lynch recommends that the Court decline to exercise supplemental jurisdiction over the Plaintiff's state law claims.

Plaintiff Gold did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been

committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch’s Findings and Recommendations (Doc. No. 4) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED. The federal claims are DISMISSED WITH PREJUDICE, while the state law claims are DISMISSED WITHOUT PREJUDICE.

DATED this 6<sup>th</sup> day of March, 2009.



Donald W. Molloy, District Judge  
United States District Court